IN THE

Supreme Court of the United States

October Term, 1973

No. 73–

WADLEIGH-MAURICE, LTD. and WARNER BROS., INC.,
Petitioners,

—v.—

THOMAS TAGGART,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Motion for Leave to File Brief As *Amicus Curiae*

The Authors League of America, Inc. respectfully petitions for leave to file the annexed brief *amicus curiae* in this proceeding. The Authors League is a national society of professional writers and dramatists; one of its principal purposes is to express their views in cases involving the rights of free speech and press. Right of privacy suits, and the threat of such litigation, constitute a serious threat to the freedom of expression of authors of books and magazine articles, and to authors and producers of documentary motion pictures and television programs. Because the determination of the issues in this case will significantly affect authors' First Amendment rights, the League respectfully applies for leave to file its brief *amicus curiae*. The attorney for the petitioners has consented to the filing of the brief. The attorney for the respondent has refused to consent.

Respectfully submitted,

IRWIN KARP,
Attorney for The Authors League of America, Inc., as amicus curiae

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BRIEF OF THE AUTHORS LEAGUE OF AMERICA

Interest of The Authors League

The Authors League is a national society of professional writers and dramatists. Many of its members write books, articles, and scripts for television and motion picture documentaries which report on current social, economic and political events and issues. As this Court has noted, right of privacy statutes and the threat of privacy litigation pose a serious threat to the freedom of expression of authors, publishers and producers of such works. The majority opinion of the Court of Appeals introduces a new theory into the field of privacy litigation which would substantially increase the danger to their First Amendment Rights. The Authors League believes the Court should grant certiorari to review this serious issue.

The "Drawing-Out" Theory Violates The First Amendment

The Court of Appeals reversed the summary judgment dismissing the plaintiff's suit for invasion of privacy against the producers of the documentary motion picture WOODSTOCK. A 2¼ minute sequence in the film shows plaintiff performing his duties, servicing portable latrines at the widely publicized 1969 Woodstock music festival, and contains a conversation with him about his work.

There is no dispute that the Festival was a "matter of public interest" within the ambit of *Time, Inc.* v. *Hill*, 385 U.S. 374. It is equally clear that defendants' film was a "report" on that matter of public interest, and therefore entitled to First Amendment protection under the *New York Times* rule, as applied in *Time, Inc.* v. *Hill*. Consequently, plaintiff could not recover for "invasion of privacy" with regard to "statements" in the film unless they were published with reckless disregard of the truth or knowledge of their falsity. Neither is possible here, since the statements were not "false"; they consisted of plaintiff's conversation in his own voice, and his activities—recorded in the motion picture.

Moreover, the motion picture did not contain "Revelations . . . so intimate and unwarranted in view of the victim's position as to outrage the community's notions of decency." *Sidis* v. *F-R Pub. Co.*, 113 F. 2d 806, 809, cert. denied 311 U.S. 711. Consequently, as this Court indicated in *Time, Inc.* v. *Hill*, the truthful statements about plaintiff in the film are absolutely protected by the First Amendment, and plaintiff cannot recover for them. (385 U.S. 383, footnote 7).

The Court of Appeals denied summary judgment solely because the plaintiff may have been "drawn out" in conversation and made an "involuntary performer" in defendants' film; if this could be established, the Court ruled, he could recover for invasion of privacy. We submit that this theory is completely without support in *Time, Inc.* v. *Hill* or the several decisions applying the *New York Times* rule and cannot deprive defendants of their immunity from liability under the rule. Even assuming plaintiff was "drawn out", the defendant's motion picture is entitled to complete First Amendment protection against this suit because it is a *truthful* "report of a matter of public interest."

Moreover, the "drawing-out" theory, like the negligence test for reckless disregard, would create a "most elusive standard" and place on producers and authors "the intolerable burden of guessing how a jury might assess the reasonableness of the steps taken" by them to avoid the so-called "drawing out". (385 U.S. 389). Equally elusive, and subject to the same objections, is the concept of "involuntary performer." The "drawing-out" theory would permit plaintiffs to avoid the *Times* rule protection for First Amendment rights by claiming "drawing-out" in many guises, thus requiring them—as here—to undergo the expenses and burdens of litigation. The "drawing-out" theory would thus restore the doubts and uncertainties that produce self-censorship and made right of privacy suits such a threat to freedom of expression. And the danger would be greater because authors, producers and publishers would be made liable even though the statements they allegedly "drew-out" were true.

The Court of Appeals' drawing-out theory poses a vital First Amendment issue which this Court should review. Moreover, the testing of this issue is appropriately presented at the summary judgment stage. *Washington Post Co.* v. *Keogh*, 365 F. 2d 965, cert. denied 385 U.S. 1011; *Thompson* v. *Evening Star Newspaper Co.*, 394 F. 2d 774. The issue is no less significant because the report was a documentary film rather than a newspaper story or a book; films are entitled to the same protection. And although the Court of Appeals laid stress on the "commercial" nature of the film, it was a documentary report entitled to the full quantum of First Amendment protection, regardless of the fact that it was "commercial" rather than "non-profit", "entertaining" rather than sombrely didactic. *Time, Inc.* v. *Hill, supra.*

CONCLUSION

It is respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

IRWIN KARP
Attorney for The Authors League of of America, Inc. as amicus curiae.
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